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Reply to:  
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November 8, 2010

The Honorable Lisa P. Jackson, Administrator  
U. S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., NW.  
Washington, DC 20460

Re: Chesapeake Bay – Draft TMDL - Docket Number EPA-R03-OW-2010-0736

Dear Administrator Jackson:

I write as the Chair of the New York State Senate Standing Committee on Agriculture and the Legislative Commission on Rural Resources to express my opposition to the above referenced proposed Total Maximum Daily Loads (TMDL) for the Chesapeake Bay (Bay).

I recognize the value of the Bay as a national resource, and the need to improve its water quality. However, I have significant concerns regarding this TMDL, and the allocation of the “pollution diet” EPA has currently envisioned for cleanup of the Bay. Chief among my objections are the inequitable way New York State is being treated relative to other Bay States, the unattainable load allocations established in the TMDL for nitrogen (N) and phosphorus (P), the devastating impact the allocations will have on agriculture in the watershed, and the costs it will impose on municipalities and residents due to the need to upgrade municipal wastewater treatment plants in the watershed in order to meet the TMDL pollutant allocations.

### **New York State is Being Treated Unfairly**

New York State has long been a leader in improving water quality. Some of these water quality improvements have been realized by reducing N, P and sediment loads from agricultural sources and municipal wastewater treatment facilities. Such reductions have come as a result of the State’s strong regulatory programs coupled with best management practices and other voluntary measures employed by New York farmers. Additionally, New York has experienced a reduction in population and loss of farms in the watershed that has resulted in reduced N, P and sediment loads. Since 1985 New York’s baseline for N and P has been decreasing. However, the TMDL does not take this into account and the State is not

receiving credit for these improvements in water quality. Given this, and the fact that 70% of the Chesapeake Bay watershed area in New York is forested, there is little opportunity for further reductions of N or P from any sources other than agriculture. Even if reductions could be found, they would come at a cost that is well beyond what is affordable for farmers in the region.

While New York has been making great strides to improve water quality, the other Bay states have experienced population growth and an expansion of high-intensity agricultural operations – which have contributed to increased N and P loading from the down-watershed states. *If water from the other Bay states and the District of Columbia had the same water quality as the water that is currently leaving New York State there would be no need for the TMDL.*

It should also be noted that agriculture is New York State's leading industry and is an integral part of the economy of the watershed region. Consequently, implementing a program that will severely curtail agriculture in the watershed will have significant negative effects for New York State's economy.

#### **Negative Impacts on New York Agriculture**

According to the Upper Susquehanna Coalition – an organization comprised of 19 Soil and Water Conservation Districts, 16 in New York and 3 in Pennsylvania – the TMDL will have the following impacts on agriculture in the watershed:

- Farms of any size will be regulated as Concentrated Animal Feeding Operations (CAFOs)
- Farms of any size will need a Comprehensive Nutrient Management Plan (CNMP)
- Farms of any size will be required to have manure storage
- Farms of any size will be prohibited from spreading manure during the winter
- All manure applied to crop fields will need to be injected
- All farms will be required to have ammonia emission controls on their facilities
- 800 additional farms will be regulated
- Large farms will be required to use Precision Feed Management

All of these impacts will result in increased costs to farmers and in all likelihood will ultimately mean the demise of many, if not all, of the farms in the watershed. Moreover, according to the New York State Commissioner of Agriculture and Markets not even the total elimination of the dairy industry in New York's portion of the watershed will enable New York to meet the proposed TMDL.

#### **Increased Costs for Municipalities and Taxpayers**

In spite of the fact that the load allocations envisioned in this TMDL are unattainable, municipalities and farmers will still be expected to spend billions of dollars for upgrades to equipment and infrastructure. According to Department of Environmental Conservation (DEC) Assistant Commissioner James Tierney,


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Re: Chesapeake Bay – Draft TMDL - Docket Number EPA-R03-OW-2010-0736  
November 8, 2010  
Page 3

"the DEC's estimate that the plan could cost New Yorkers between \$3 billion and \$6 billion in upgrades to farms, sewer systems and wastewater treatment plants is very conservative."

EPA has determined that none of the Watershed Implementation Plans for the TMDL submitted to date by the Bay states and the District of Columbia are acceptable. Clearly, EPA's expectations, which are based on computer models, are out of touch with what the experts in the field believe can realistically be achieved. It is also troubling that the EPA has developed "backstop" allocations that will be forced upon the States at great cost.

Given the current economic climate and the considerable fiscal challenges that farmers, municipalities and taxpayers are enduring, there could not be a worse possible time to implement this TMDL - particularly when the waste load allocations are unattainable. Therefore, I urge the EPA to withdraw this proposed TMDL. I further urge the agency to redirect their efforts toward establishing a plan that is attainable, takes into account the significant progress New York State has already made in reducing nutrient load to the Bay and requires greater load reductions by the States that will benefit the most from improved water quality in the Bay.

Sincerely,



Darrel J. Aubertine  
State Senator

eh

cc: Judith A. Enck, Regional Administrator, USEPA  
Honorable Charles Schumer, United States Senate  
Honorable Kirsten Gillibrand, United States Senate  
Honorable William Owens, United States House of Representatives  
Lawrence Schwartz, Secretary to Governor Paterson  
Peter Iwanowicz, Acting Commissioner, New York State Department of Environmental Conservation  
Patrick Hooker, Commissioner, New York State Department of Agriculture and Markets  
Andrew Cuomo, Attorney General, Governor-elect